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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,262	11/03/2003	Gary Stephen Moore	700650-1002	3697

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EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/700,262

Applicant(s)

MOORE ET AL.

Examiner

Bret C Hayes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 October 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7,9-12,15 and 16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-5,7,9-12,15 and 16 is/are rejected.  
7) ☒ Claim(s) 1 and 7 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claims 1 and 7 are objected to because of the following informalities: line 14, and lines 26 and 27, respectively, remove “the” before “other”, for clarity—as no ‘other’ nozzles have been recited, the potential for a lack of antecedent basis problem looms. Appropriate correction is required.

### *Claim Rejections - 35 USC § 103*

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1 – 5, 7, 9 – 12, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Nos. 6,669,105 B2 to Bryan et al. (*Bryan*) [previously cited—see form PTO-892, mailed 08 AUG 04] in view of 5,921,019 to Baek.

4. Re – claim 1, Bryan discloses the invention substantially as claimed including a transportable, positionable, directionable insect control mister comprising a frame 1, at least one wheel, see Fig. 1, for example, mounted on the frame 1 and supporting the insect control mister, a handle—most vehicles inherently include a steering wheel, which, is a handle as defined by *The American Heritage® Dictionary of the English Language, Fourth Edition Copyright © 2000 by Houghton Mifflin Company*, to be ‘a part that is designed to be held or operated with the hand’, a tank 18 mounted on the frame 1, a housing, in this case, the vehicle bed is a housing similarly defined as ‘something that covers, protects, or supports, especially: A frame, bracket, or

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box for holding or protecting a mechanical part: *a wheel housing*, (emphasis added), supported on the frame 1, a non-flexible discharge arm 23 supported on the housing, a discharge nozzle 7 supported on the arm 17, an electric\* pump 19 supported on the frame 1 operating at a predetermined discharge pressure and for a predetermined time duration, as by (SRC) 8, an automatic electric control system 8 (SRC) mounted within the housing, and means for supplying electric power, set forth at col. 5, line 8 (5:8). While Bryan does not explicitly state the pump 19 being an electric pump, it is implied at 1:37, "While the spray results for electrical power generators are similar to the gas powered spray systems, they are significantly quieter during spraying.", which is to say, preferred should one desire quietness of operation.

However, Bryan fails to disclose a plurality of discharge arms, a plurality of discharge nozzles and each of the nozzles being selectively positionable relative to the housing and relative to other nozzles.

Baek teaches a plurality of discharge arms 21, a plurality of discharge nozzles 14, 16 and each of the nozzles 14, 16 being selectively positionable relative to a 12 housing and relative to other nozzles 14, 16, set forth at 5:24 – 37, for example, in the same field of endeavor for the purpose of spraying insecticides.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bryan to include a plurality of discharge arms, a plurality of discharge nozzles and each of the nozzles being selectively positionable relative to the housing and relative to other nozzles, as taught by Baek in order to directionally control insecticide spray.

5. Re – claim 2, Bryan in view of Baek discloses the invention substantially as claimed except for the agent comprising pyrethrum. As demonstrated in the previous office action,

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Erickson (US Patent No. 2,201,995) knew about the use of pyrethrum as insecticide as early as 30 AUG 1935. It would be safe to assume that pyrethrum is well known in the art and an obvious insect controlling agent.

6. Re – claim 3, Bryan in view of Baek discloses the claimed invention except for the agent being CEDARCIDE®. It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute CEDARCIDE®, since the equivalence of pyrethrum and CEDARCIDE® for their use in the insect controlling art and the selection of any known equivalents to pyrethrum would be within the level of ordinary skill in the art.

7. Re – claim 4, Bryan discloses the tank 18 comprising an integral structure\* which is at least partially received within the housing. The ‘tank’ comprising an ‘integral structure’, whether explicitly disclosed by Bryan or not, is a matter of obviousness as it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1983). Further, it has been held that the term “integral” is sufficiently broad to embrace constructions united by such means as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973). In this case, “a tank” is normally an integral structure and rarely two separate pieces.

8. Re – claim 5, see above regarding ‘integral’.

9. Re – claim 15, Bryan further discloses the arm 23 comprising a passageway from the pump 19 to the nozzle 7.

10. Concerning method claims 7, 9 – 12 and 16, in view of the structure disclosed by Bryan in view of Baek, the method of operating the device would have been inherent, since it is the normal and logical manner in which the device could be used.

*Response to Arguments*

11. Applicant's arguments with respect to claims 1 – 5, 7, 9 – 12, 15 and 16 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

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If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu, can be reached at (703) 305 – 7421. The fax number is (703) 872 – 9306.

bh

12/14/04



TERI PHAM LUU  
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